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10/616,287	07/09/2003	Hiroyuki Takahashi	16816	9906

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SCULLY SCOTT MURPHY & PRESSER, PC
400 GARDEN CITY PLAZA
GARDEN CITY, NY 11530

EXAMINER	
JOHNSON III, HENRY M	

ART UNIT	PAPER NUMBER
3739	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/616,287	TAKAHASHI, HIROYUKI	
	Examiner	Art Unit	
	Henry M Johnson, III	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *amendment filed 12/22/2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 December 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Response to Arguments

Applicant's arguments filed 12/22/2004 have been fully considered but they are not persuasive. The communication between medical devices is well known in the art using many methodologies. The IEEE 488 and RS-485 are two such industry standard means that provide communications between equipment via a master. This is an obvious alternative to peer to peer communication between medical devices without a "traffic cop" master.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 5 and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,788,688 to Bauer et al. Bauer et al. disclose a surgical apparatus that integrates multiple surgical devices (abstract) using a computer system (Fig. 3, # 78) with standard interfaces for communication with the devices (IEEE-488 or RS-485). The communications interface in each medical device provides a communications means, drive control means, reply means. The IEE-488 bus incorporates the ability to talk, listen and provides the "handshaking" necessary for communications integrity. The medical devices may be activated via a control panel (Fig. Fig. 4) or a foot switch (Fig. 9). The processor of the computer system enables a means for complex decision making based on the information received from the devices, including the surgeon's control panel (Fig. 3, # 70), and sending any information or control signals to the devices. This decision capability is specifically disclosed by an example not allowing the monopolar and bipolar devices to operate simultaneously (Col. 16,

lines 1-6). Laparoscopic devices disclosed include insufflation devices (pneumoperitoneum), irrigation/suction, laser (Col. 1, lines 26-30) and monopolar and bipolar electrosurgical devices (Col. 6, lines 49-53). Bauer et al. do not disclose permission/non-permission decisions by the medical devices, but by a host computer. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use a host computer for decision making as an equivalent alternative to distributed decision making by the medical devices because Applicant has not disclosed that a specific methodology provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either distributed decision making or central decision making as they both provide the necessary coordination of the medical devices. Further, the applicant suggests a host system as shown by figure 8. Therefore, it would have been an obvious matter of design choice to use the central computer for coordination as taught by Bauer et al. to obtain the invention as specified in claims 1, 2 and 5.

Regarding claim 14, each of the medical devices disclosed by Bauer et al. has an IEEE-488 interface that inherently requires a programmable processor. The processors provide each device with the capability for making operational decisions.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,788,688 to Bauer et al. in view of U.S. Patent 5,502,726 to Fischer. Bauer et al. are discussed above, but do not disclose timeouts. The use of timeout circuits and watchdog timers is pervasive in the art as evidenced by the Fischer patent that teaches a medical network that uses a watchdog timer (Fig. 5, # 526) to check for timeliness of data transfers and to initiate a program sequence in the event of a timeout. It would have been obvious to one having ordinary

skill in the art at the time the invention was made to use the timeout circuits as taught by Fischer in the system of Bauer et al. to insure system integrity.

Regarding claim 4, Bauer et al. teach activation of the devices by hand or foot switches (Fig. 8) and that status information is communicated to the processor.

Claims 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,788,688 to Bauer et al. in view of U.S. Patent 6,679,875 to Honda et al. Bauer et al. are discussed above, but do not disclose an ultrasonic device or the explicit teaching of the use of an identifying code for each device. Honda et al. disclose a medical treatment system including an ultrasonic device (Col. 5, line 6) and a HF cutting device (Col. 5, line 10) and the use identifying codes for each device (Col. 2, lines 51-54). The decision means and switch detecting means are also discussed in Bauer et al. above.

Regarding claims 6, 7 and 9, although it is strongly implied by Bauer et al. that an identifying means is included (Col. 11, lines 1-15), it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the identifying codes as taught by Honda et al. in the invention of Bauer et al. to insure a positive knowledge of each device in the system.

Regarding claim 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the ultrasonic and HF devices as taught by Honda et al. in the device of Bauer et al. as they are routinely used in both endoscopic and laparoscopic procedures.

Regarding claims 10-12, the surgical devices disclosed are known in the art and all require ancillary or support devices to function properly. The presence of a drive device is implicitly disclosed when a device is disclosed. With the pervasive use of computers in the medical arts, most devices are provided with communications capability to standard computer

interfaces such as IEEE-488 or RS-485. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include computer compatible device drivers in either or both of the inventions of Honda et al. or Bauer et al.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Henry M. Johnson, III
Patent Examiner
Art Unit 3739

ROY D. GIBSON
PRIMARY EXAMINER